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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MICHELLE M. VANDIVER,

9 Plaintiff,

10 v.

11 MICHAEL J. ASTRUE, Commissioner of
12 Social Security

13 Defendant.

Case No. C10-5759BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

14 This matter comes before the Court on the Report and Recommendation (“R&R”) of
15 the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 18) and Plaintiff
16 Michelle Vandiver’s (“Vandiver”) objections to the R&R (Dkt. 19).

17 **I. PROCEDURAL HISTORY**

18 On October 15, 2010, Vandiver filed a complaint requesting judicial review of an
19 administrative law judge’s (“ALJ”) decision that she was not disabled. Dkts. 1-3. On
20 September 19, 2011, Judge Strombom issued the R&R recommending that the Court affirm
21 the ALJ’s decision that Vandiver is not disabled. Dkt. 18. On October 3, 2011, Vandiver
22 filed objections to the R&R. Dkt. 19. On October 17, 2011, the Government responded.
23 Dkt. 20.

24 **II. DISCUSSION**

25 A district judge “shall make a de novo determination of those portions of the report or
26 specified proposed findings or recommendations to which objection is made” and “may
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1 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
2 magistrate judge.” 28 U.S.C. § 636 (b)(1)(B). In this case, Vandiver objects to five portions
3 of the R&R, which are addressed below.

4 **A. Vandiver’s Impairments**

5 Vandiver argues that the ALJ failed to identify all of her severe impairments and
6 failed to consider the functional limitations of all of her impairments, including impairments
7 that were not considered severe. Dkt. 19 at 3-4. First, Vandiver argues that the ALJ erred
8 by not finding that Vandiver’s anxiety and mood disorders were severe impairments. Judge
9 Strombom found that Vandiver has failed to provide any argument as to why these were
10 severe impairments. In her objections, Vandiver also fails to provide any reason why the
11 ALJ erred on this issue or why her anxiety and mood disorders were severe impairments.

12 Second, Vandiver argues that the ALJ erred by not considering the functional
13 limitations of her anxiety and mood disorders. Vandiver states that “it is apparent from the
14 ALJ’s analysis that he failed to properly consider all of the limitations caused by Vandiver’s
15 impairments” Dkt. 19 at 3. Vandiver’s conclusory statement, without further support
16 or citations to the record, is without merit. Therefore, the Court adopts the R&R on this
17 issue.

18 **B. Evaluation of the Medical Evidence**

19 Vandiver argues that the ALJ erred by not providing specific and legitimate reasons
20 for discounting the opinion of an examining physician. Dkt. 19 at 4-8. Judge Strombom
21 found that the ALJ considered conflicting evidence from two examining physicians and was
22 well within his authority to rely on one over the other. Dkt. 18 at 10 (citing *Saelee v.*
23 *Chater*, 94 F.3d 520, 522 (9th Cir. 1996)). On this issue, Vandiver fails to show any error in
24 either the ALJ’s decision or Judge Strombom’s opinion. Therefore, the Court adopts the
25 R&R on this issue.

1 **C. Vandiver's Testimony**

2 Vandiver argues that the ALJ failed to properly evaluate her testimony regarding her
3 symptoms and limitations. Dkt. 19 at 9-11. Vandiver's objections are almost identical to
4 her opening brief. *Compare id. with* Dkt. 13 at 16-18. Judge Strombom cited specific
5 reasons the ALJ stated for discounting Vandiver's testimony and, ultimately, disagreed with
6 Vandiver. Dkt. 18 at 11-13. The Court has reviewed the record and also disagrees with
7 Vandiver. Therefore, the Court adopts the R&R on this issue.

8 **D. Residual Functional Capacity and Work in the National Economy**


9 Vandiver argues that the ALJ erred by improperly determining her residual functional
10 capacity and by finding that there are a significant number of jobs in the national economy
11 that Vandiver can perform. Dkt. 19 at 11-12. Vandiver's arguments are essentially that the
12 ALJ erred at these steps because the ALJ erred at the previous steps. The Court finds that,
13 based on the record, Vandiver's arguments and objections are without merit. Therefore, the
14 Court adopts the R&R on this issue.

15 **III. ORDER**

16 Therefore, having considered the R&R, Vandiver's objections, and the remaining
17 record, the Court hereby finds and orders as follows:

- 18 (1) The R&R is **ADOPTED**;
19 (2) The ALJ's decision is **AFFIRMED**; and
20 (3) This action is **DISMISSED**.

21 DATED this 16th day of November, 2011

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24 BENJAMIN H. SETTLE
25 United States District Judge
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